

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
City of Boston, Massachusetts)	WT Docket No. 02-55
and Sprint-Nextel)	
)	
Mediation No. TAM-11155)	

To: The Secretary, for forwarding to the Chief, Public Safety and Homeland Security Bureau

STATEMENT IN SUPPORT OF PETITION FOR RECONSIDERATION

1. The City of Philadelphia ("City") submits these comments in support of the Petition for Reconsideration ("Petition") in the above-captioned matter, filed on behalf of the City of Memphis, Tennessee, *et al.* ("Memphis"), on December 21, 2006. The Petition seeks reconsideration of certain aspects of the Public Safety and Homeland Security Bureau's ("Bureau") post-mediation Memorandum Opinion & Order ("MO&O"), DA 06-2556, released December 20, 2006 ("Boston Decision"), in which the Bureau determined that Sprint-Nextel Corporation ("Sprint") would not be required to reimburse the City of Boston for costs to remove pre-rebanding channels from its radios, following the programming of the new 800 MHz channels in each of its radios and the transition period during which both new and old channels would be used.

2. The City is concerned that if the Bureau upholds the Boston Decision as issued and deems it to have precedential value for other licensees' negotiations and agreements with Sprint, it will force licensees to leave abandoned channels in their radios, with the unacceptable consequences described in this Statement. The Bureau should reconsider its decision in this matter and for the reasons here described, require Sprint to reimburse the reasonable costs of channel removal. Alternatively, if the Bureau lets the decision stand, it should make clear that

the decision does not govern the negotiations or agreements with Sprint of any other licensee, including any resulting mediations or other proceedings.¹

3. It is critical that programming for the old frequencies be removed after rebanding has been completed because failure to do so risks communication failures and threatens public safety. The Commission's Orders in this proceeding and the Transition Administrator's ("TA") guidelines make it very clear that no licensee is required to risk avoidable disruption to public safety communications during the reconfiguration process, and that all licensees are entitled to reconfigured facilities that are comparable to their existing facilities.² Removing old channels from all radios is operationally necessary to realizing these fundamental principles of the reconfiguration process. Failure to remove abandoned channels from the City's 800 MHz radios will jeopardize emergency communications and thereby create a serious public safety hazard. The costs of removing pre-rebanding channels are just as integral to the optimized solution of band reconfiguration as are the costs of initial "first touch" programming in the new 800 MHz

¹ Because the issue of the need, following the transition period, for mobile and portable radios to be handled for a second time to remove the pre-rebanding channels from the radios was not a matter directly argued by the parties before the issuance of the Boston Order, the references to such "second touch" should be considered merely *obiter dicta* and therefore not binding as precedent.

² See Transition Administrator 800 MHz Band Reconfiguration Handbook, at p. 7 ("The FCC's R&O is designed to provide an effective and equitable solution with minimal disruption to users of the 800 MHz Band. Sprint Nextel will pay all reasonable and prudent expenses directly related to the retuning of an 800 MHz system, and relocated licensees will receive comparable facilities when they reconfigure."); see also Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, FCC 04-168, Released August 6, 2004, at p. 96 ("Nextel [sic] will pay for all channel changes necessary to implement the reconfiguration. Nextel is obligated to ensure that relocated licensees receive at least comparable facilities when they change channels.").

channels. Accordingly, removal of pre-rebanding channels from mobiles and portables is a necessary step in the rebanding process and therefore is a cost properly reimbursable by Sprint.

4. The City, like Memphis, justifies its participation in this matter pursuant to Section 1.106(b)(1) of the Commission's Rules. As set forth in detail below, the City's interest would be directly and adversely affected were the Boston Decision to be used as precedent for denying the City reimbursement for the cost of removing abandoned channels from its public safety radios.³

5. There are many reasons why abandoned channels cannot be left in radios used by the City's first responders without placing them at risk, including:

a. Not all of the City's radios transmit exclusively on channels assigned to them by a system controller. The controller can, in normal conditions, be expected to prevent operation on "unauthorized" channels (including abandoned channels that are still programmed into the radios) and the resulting dropped calls. However, in Philadelphia, interoperability between different jurisdictions⁴ commonly depends on using conventional rather than trunked channels, and the user must manually select an appropriate channel to

³ The City did not participate earlier because it was not a party to the Boston mediation process and had no reason to monitor or attempt to intervene in any other municipality's mediation; nor did the City have any reason to anticipate that the Bureau would rule against reimbursement for channel removal, given that unusable channels remaining in radios after rebanding represent a serious potential hazard in emergency situations.

⁴ Interoperability is a critical operational issue to the City of Philadelphia, as it is to all major cities that are bordered by multiple suburban and out-of-state jurisdictions. It is also an essential homeland security initiative that should not be thwarted by the issue of channel removal.

communicate with emergency personnel in the jurisdiction. For these non-trunked channels that are not governed by a system controller, there is no protection against a user selecting an abandoned channel by mistake and losing communications. The result would be a potentially dangerous delay in establishing the communication link, putting both emergency personnel and the public at risk, as well as interfering with new users of the channels.

b. Leaving abandoned channels presents a similar risk even in the trunked system because a user dealing with an emergency might have to make a manual decision as to which talk group to select. Again, accidentally selecting an abandoned channel in an effort to find the needed talk group would cause delay, putting the officer or firefighter at risk. Moreover, channel and talk group selection commonly is made under severe stress. The more choices that are available to the user, the more chances there are for error. An error that delays establishing contact could easily cause loss of life and/or property. In addition, some public safety users, particularly fire personnel, wear protective gloves that can make it more difficult to scroll through talk groups to the right one. Minimizing wrong choices is critical to quickly finding usable communication link. Worse, locking on to the wrong channel, even temporarily, can present an intolerable hazard to the City's emergency responders.

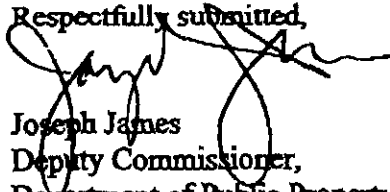
c. If abandoned channels are not removed, the radio's automatic channel access mode will have to search through both live channels and the abandoned channels to find a control channel signal, making it take twice as long to lock on to the correct group.

The extra search time will degrade real-time system performance, particularly in faded or weak RF environments where a radio may be adversely affected by the presence of a stronger signal on an abandoned channel group than on the desired group. This amounts to an otherwise avoidable disruption to the system and has the potential of degrading or eliminating the interference mitigation that is the entire point of reconfiguration. The result could well be a less effective, and certainly less safe, radio system after reconfiguration than before. As noted, the Commission's Orders and the TA's guidelines are clear that no licensee is required to accept less than comparable facilities after reconfiguration.

6. For the reasons described above, the City believes the Boston Decision is contrary to the determinations of the Commission and the TA that disruption to communications in the reconfiguration process must be minimized and that licensees are entitled to comparable facilities after reconfiguration. More importantly, leaving abandoned channels puts our emergency responders at risk. Removing abandoned channels is an essential part of the reconfiguration process and, as such, the costs licensees incur to remove the old channels must be reimbursed by Sprint, regardless of the number of times the radios are "touched" in order to ensure removal. The City urges the Bureau to reconsider the Boston Decision and to uphold the right of licensees to reimbursement for removing abandoned channels. Any other result leaves us in the position of paying for removal costs ourselves in violation of the fundamental principle adopted by the Commission and the TA that licensees are to be fully reimbursed for their reasonable and necessary costs of reconfiguration. If the Bureau lets the Boston Decision stand, it should be limited to the specific facts of that case and the Bureau should prohibit its being cited or used as

precedent with respect to any other licensee's recovery of removal costs, including any mediations or subsequent proceedings that may result from disputes with Sprint regarding reimbursement for removal costs.

Respectfully submitted,



Joseph James
Deputy Commissioner,
Department of Public Property

January 19, 2007

CERTIFICATE OF SERVICE

I, Robert Sutton, do hereby certify that on this 19th day of January, 2007, I have caused copies of the foregoing "Statement in Support of Petition for Reconsideration" to be sent by first class United States mail, postage prepaid, to the following:

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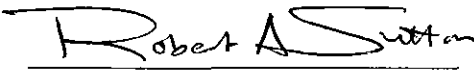
In addition, copies will be sent via electronic mail on the 19th day of January, 2007, to the following:

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